रजिस्ट्री सं. डी-(डी)-72 REGISTERED No. D-(D)-72

भारत का राजपत्र
The Gazette of India

असाधारण
EXTRAORDINARY
भाग II—खण्ड 2
PART II—Section 2
प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं० 48] नई दिल्ली, सोमवार, नवम्बर 17, 1986/कार्तिक 26, 1908
No. 48] NEW DELHI, MONDAY, NOVEMBER 17, 1986/KARTIKA 26, 1908

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके ।
Separate paging is given to this Part in order that it may be filed as a separate compilation

LOK SABHA

The following Bills were introduced in Lok Sabha on the 17th November, 1986:—

BILL No. 128 OF 1986

A Bill to authorise payment and appropriation of certain further sums from and out of the Consolidated Fund of India for the services of the financial year 1986-87 for the purposes of Railways.

BE it enacted by Parliament in the Thirty-seventh Year of the Republic of India as follows:—

1. This Act may be called the Appropriation (Railways) No. 4 Act, 1986. Short title.

2. From and out of the Consolidated Fund of India there may be paid and applied sums not exceeding those specified in column 3 of the Schedule amounting in the aggregate to the sum of five hundred and ninety crores and forty-two lakhs rupees towards defraying the several charges which will come in course of payment during the financial year 1986-87, in respect of the services relating to Railways specified in column 2 of the Schedule. issue of Rs. 590, 42,00,000 out of the Consolidated Fund of India for the financial year 1986-87.

3. The sums authorised to be paid and applied from and out of the Consolidated Fund of India by this Act shall be appropriated for the services and purposes expressed in the Schedule in relation to the said year. Appropriation.

THE SCHEDULE

(*See* sections 2 and 3)

1	2	3		
No. of Vote	Services and purposes	Sums not exceeding		
		Voted by Parliament	Charged on the Consolidated Fund	Total
		Rs.	Rs.	Rs.
1	Railway Board	70,00,000	..	70,00,000
3	General Superintendence and Services on Railways . .	55,85,34,000	..	55,85,34,000
4	Repairs and Maintenance of Permanent Way and Works	80,93,33,000	..	80,93,33,000
5	Repairs and Maintenance of Motive Power . . .	43,74,79,000	..	43,74,79,000
6	Repairs and Maintenance of Carriages and Wagons . .	66,64,44,000	..	66,64,44,000
7	Repairs and Maintenance of Plant and Equipment .	43,58,43,000	..	43,58,43,000
8	Operating Expenses—Rolling Stock and Equipment . .	62,23,18,000	..	62,23,18,000
9	Operating Expenses—Traffic .	105,01,32,000	..	105,01,32,000
10	Operating Expenses—Fuel . .	1,29,61,000	..	1,29,61,000
11	Staff Welfare and Amenities .	27,38,19,000	..	27,38,19,000
12	Miscellaneous Working Expenses	32,61,37,000	..	32,61,37,000
14	Appropriation to Funds . .	70,00,00,000	..	70,00,00 000
16	Assets—Acquisition, Construction and Replacement . .			
	Other Expenditure	42,00,000	..	42,00,000
	TOTAL	590,42,00,000	..	590,42,00,000

STATEMENT OF OBJECTS AND REASONS

This Bill is introduced in pursuance of article 114(1) of the Constitution of India, read with article 115 thereof, to provide for the appropriation out of the Consolidated Fund of India of the moneys required to meet the supplementary expenditure on the grants made by the Lok Sabha for expenditure of the Central Government on Railways for the financial year 1986-87.

MADHAVRAO SCINDIA.

BILL No. 130 OF 1986

A Bill further to amend the Coking Coal Mines (Nationalisation) Act, 1972 and the Coal Mines (Nationalisation) Act, 1973.

BE it enacted by Parliament in the Thirty-seventh Year of the Republic of India as follows:—

Short title and commencement.

1. (*1*) This Act may be called the Coal Mines Nationalisation Laws (Amendment) Act, 1986.

(*2*) Save as otherwise expressly provided, the amendments to the Coking Coal Mines (Nationalisation) Act, 1972 shall be deemed to have come into force on the 1st day of May, 1972 and the amendments to the Coal Mines (Nationalisation) Act, 1973 shall be deemed to have come into force on the 1st day of May, 1973, and the remaining provisions of this Act shall be deemed to have come into force on the 7th day of October, 1986. 36 of 1972. 26 of 1973.

Amendment of section 4.

2. (*1*) In section 4 of the Coking Coal Mines (Nationalisation) Act, 1972 (hereinafter referred to as the Coking Coal Act), sub-section (*2*) shall be omitted, and shall be deemed to have been omitted with effect from the 1st day of June, 1972. 36 of 1972.

(*2*) The omission of sub-section (*2*) of section 4 of the Coking Coal Act by sub-section (*1*) of this section shall not affect the previous operation of the provisions of the said sub-section (*2*) or anything duly done or suffered thereunder.

Amendment of section 6.

3. In section 6 of the Coking Coal Act,—

(*a*) in sub-section (*1*),—

(*i*) for the words "as if a mining lease", the words "as if a fresh mining lease" shall be substituted;

(*ii*) for the words "being the entire period", the words "shall be the maximum period" shall be substituted;

(*b*) in sub-section (*2*), the words ", on the same terms and conditions on which the lease was held on the appointed day," shall be omitted.

Amendment of section 10.

4. Section 10 of the Coking Coal Act shall be renumbered as sub-section (*1*) thereof, and after sub-section (*1*) as so renumbered, the following sub-section shall be inserted, namely:—

"(*2*) For the removal of doubts, it is hereby declared that the amount specified in the fifth column of the First Schedule against any coking coal mine or group of coking coal mines specified in the second column of the said Schedule and required to be given by the Central Government to its owner under sub-section (*1*) shall be deemed to include, and deemed always to have included, the amount required to be paid to such owner in respect of all coal in stock or other assets referred to in clause (*j*) of section 3 on the date immediately before the appointed day and no further amount shall be payable to the owner in respect of such coal or other assets.".

Amendment of section 11.

5. Section 11 of the Coking Coal Act shall be renumbered as sub-section (*1*) thereof, and after sub-section (*1*) as so renumbered, the following sub-section shall be inserted, namely:—

"(*2*) For the removal of doubts, it is hereby declared that the amount specified in the fifth column of the Second Schedule against any coke oven plant specified in the second column of the said Schedule and required to be given by the Central Government to its owner under sub-section (*1*) shall be deemed to include, and deemed always to have included, the amount required to be paid to such owner in respect of all coke in stock or other assets referred to in clause (*b*) of section 3 on the date immediately before the appointed day and no further amount shall be payable to the owner in respect of such coke or other assets.".

Substitution of new section for section 17.

6. For section 17 of the Coking Coal Act, the following section shall be substituted, namely:—

Liability of officer or other employee of a coking coal mine or coke oven plant for transfer to any other coking coal mine or coke oven plant,

"17. Notwithstanding anything contained in the Industrial Disputes Act, 1947 or in any other law for the time being in force, the services of any officer or other employee employed in a coking coal mine or coke oven plant shall be liable to be transferred to any other coking coal mine or coke oven plant and such transfer shall not entitle such officer or other employee to any compensation under this Act or any other law for the time being in force and no such claim shall be entertained by any court, tribunal or other authority.".

14 of 1947.

Amendment of section 21.

7. In section 21 of the Coking Coal Act,—

(*a*) in sub-section (*2*), the words, figures and letters ", and simple interest at the rate of four per cent. per annum on such amount for the period commencing on the 1st day of April, 1973 and ending on the date of payment of such amount to the Commissioner" shall be inserted at the end;

(*b*) in sub-section (*5*), the words, brackets and figure "and shall also be payable to the Commissioner in addition to the sum referred to in sub-section (*1*)" shall be inserted at the end.

Amendment of section 22.

8. In section 22 of the Coking Coal Act,—

(*a*) for sub-section (*4*), the following sub-section shall be substituted, namely:—

"(*4*) The liabilities of the coking coal mine or the coke oven plant (not being liabilities arising out of advances made by the Central Government or the Government company), which could not be discharged by the appointed day, may be discharged by the Central Government or the Government company up to the specified date out of the realisations effected before or after the appointed day or out of advances or borrowings made up to the specified date and every payment so made shall be included in the statement of accounts as on the date immediately before the appointed day indicating therein the period in relation to which the payments were made and the payments so made shall not be called in question in any court:

Provided that the liabilities in relation to the period prior to the appointed day, which have not been discharged on or before the specified date, shall be the liabilities of the owner of the coking coal mine or the coke oven plant, as the case may be.";

(*b*) after sub-section (*7*), the following sub-section and *Explanation* shall be inserted, namely:—

'(*8*) The statement of accounts audited under sub-section (*6*) shall, unless the contrary is proved, be conclusive proof in respect of every matter entered therein.

Explanation.—For the purposes of this section, "statement of accounts" means a statement in the form of receipts and payments, and does not include any statement that may be prepared as a result of the closing and balancing of the books for the preparation of the profit and loss account and balance-sheet or any statement prepared in accordance with the normal commercial practice.'.

Substitution of new section for section 25.

9. For section 25 of the Coking Coal Act, the following section shall be substituted, namely:—

Recovery of excess payments

'25. Any amount in excess of payments over receipts in the statement of accounts prepared under section 22 shall be deemed to be an amount advanced by the Central Government or the Custodian,

as the case may be, for the management of a coking coal mine or a coke oven plant during the period in which the management of such mine or plant remained vested in the Central Government and the Central Government may make a claim to the Commissioner for such excess payment and such claim shall have priority over the claims of all other unsecured creditors of the coking coal mine or coke oven plant. made by Central Government or Custodian.

Explanation.—In this section, "Custodian" means the Custodian appointed under the Coking Coal Mines (Emergency Provisions) Act, 1971.'. 64 of 1971.

Amendment of section 26.

10. In section 26 of the Coking Coal Act, after sub-section (*2*) and before the *Explanation*, the following sub-section shall be inserted, namely:—

"(*3*) Where the amount specified in the fifth column of the First Schedule is relatable to a group of coking coal mines, the Commissioner shall have power to apportion such amount among the owners of such group, and in making such apportionment, the Commissioner shall have regard to the highest annual production in the coking coal mine during the three years immediately preceding the appointed day.".

Amendment of section 8.

11. (*1*) In section 3 of the Coal Mines (Nationalisation) Act, 1973, (hereinafter referred to as the Coal Mines Act), 26 of 1973.—

(*a*) sub-section (*2*) shall be omitted, and shall be deemed to have been omitted with effect from the 1st day of June, 1973;

(*b*) in sub-section (*4*), the words, brackets and figures ", notwithstanding anything contained in sub-section (*2*), or in the proviso to sub-section (*2*) of section 3 of the Coal Mines (Taking Over of Management) Act, 1973," shall be omitted; 15 of 1973.

(*c*) after sub-section (*4*), the following sub-section shall be inserted, namely:—

"(*5*) If, after the appointed day, the Central Government is satisfied, whether from any information received by it or otherwise, that there has been any error, omission or misdescription in relation to the particulars of a coal mine included in the Schedule or the name and address of the owner of any such coal mine, it may, by notification, correct such error, omission or misdescription and on the issue of such notification, the relevant entries in the Schedule shall be, and shall be deemed always to have been, corrected accordingly:

Provided that no such correction in relation to the ownership of a coal mine shall be made where such ownership is in dispute.".

(*2*) The omission of sub-section (*2*) of section 3 of the Coal Mines Act by clause (*a*) of sub-section (*1*) of this section shall not affect the previous operation of the provisions of the said sub-section (*2*) or anything duly done or suffered thereunder.

Amendment of section 4.

12. In section 4 of the Coal Mines Act,—

(*a*) in sub-section (*1*),—

(*i*) for the words "as if a mining lease", the words "as if a fresh mining lease" shall be substituted;

(*ii*) for the words "the entire period", the words "the maximum period" shall be substituted;

(*b*) in sub-section (*2*), the words ", on the same terms and conditions on which the lease was held, immediately before the appointed day," shall be omitted.

Amendment of section 8.

13. Section 8 of the Coal Mines Act shall be renumbered as sub-section (*1*) thereof, and after sub-section (*1*) as so renumbered, the following sub-section shall be inserted, namely:—

"(*2*) For the removal of doubts, it is hereby declared that the amount specified in the fifth column of the Schedule against any coal mine or group of coal mines specified in the second column of the said Schedule and required to be given by the Central Government to its owner under sub-section (*1*) shall be deemed to include, and deemed always to have included, the amount required to be paid to such owner in respect of all coal in stock or other assets referred to in clause (*h*) of section 2 on the date immediately before the appointed day and no further amount shall be payable to the owner in respect of such coal or other assets.".

Substitution of new section for section 14.

14. For section 14 of the Coal Mines Act, the following section shall be substituted, namely:—

Liability of officer or other employee of a coal mine for transfer to any other coal mine.

"14. Notwithstanding anything contained in the Industrial Disputes Act, 1947, or in any other law for the time being in force, the services of any officer or other employee employed in a coal mine shall be liable to be transferred to any other coal mine and such transfer shall not entitle such officer or other employee to any compensation under this Act or any other law for the time being in force and no such claim shall be entertained by any court, tribunal or other authority.". 14 of 1947.

Amendment of section 18.

15. In section 18 of the Coal Mines Act,—

(*a*) in sub-section (*2*), the words, figures and letters ", and simple interest at the rate of four per cent. per annum on such amount for the period commencing on the 1st day of July, 1975 and ending on the date of payment of such amount to the Commissioner" shall be inserted at the end;

(*b*) in sub-section (*5*), the words, brackets and figure "and shall also be payable to the Commissioner in addition to the sum referred to in sub-section (*1*)" shall be inserted at the end.

Amendment of section 19.

16. In section 19 of the Coal Mines Act,—

(*a*) for sub-section (*4*), the following sub-section shall be substituted, namely:—

"(*4*) The liabilities of the coal mine (not being liabilities arising out of advances made by the Central Government or the Government company), which could not be discharged by the appointed day, may be discharged by the Central Government or

the Government company up to the specified date out of the realisations effected before or after the appointed day or out of advances or borrowings made up to the specified date and every payment so made shall be included in the statement of accounts as on the date immediately before the appointed day indicating therein the period in relation to which the payments were made and the payments so made shall not be called in question in any court:

Provided that the liabilities in relation to the period prior to the appointed day, which have not been discharged on or before the specified date, shall be the liabilities of the owner of the coal mine.";

(*b*) after sub-section (*7*), the following sub-section and *Explanation* shall be inserted, namely:—

'(*8*) The statement of accounts audited under sub-section (*6*) shall, unless the contrary is proved, be conclusive proof in respect of every matter entered therein.

Explanation.—For the purposes of this section, "statement of accounts" means a statement in the form of receipts and payments, and does not include any statement that may be prepared as a result of the closing and balancing of the books for the preparation of the profit and loss account and balance-sheet or any statement prepared in accordance with the normal commercial practice.'.

Substitution of new section for section 25.

17. For section 25 of the Coal Mines Act, the following section shall be substituted, namely:—

Recovery of excess payments made by Central Government or Custodian.

'25. Any amount in excess of payments over receipts in the statement of accounts prepared under section 19 shall be deemed to be an amount advanced by the Central Government or the Custodian, as the case may be, for the management of a coal mine during the period in which the management of such coal mine remained vested in the Central Government and the Central Government may make a claim to the Commissioner for such excess payment and such claim shall have priority over the claims of all other unsecured creditors of the coal mine, including those referred to in sub-section (*2*) of section 22.

Explanation.—In this section, "Custodian" means the Custodian appointed under the Coal Mines (Taking Over of Management) Act, 1973.'.

15 of 1973.

Amendment of section 26.

18. In section 26 of the Coal Mines Act, after sub-section (*5*) and before the *Explanation*, the following sub-section shall be inserted, namely:—

"(*6*) Where the amount specified in the fifth column of the Schedule is relatable to a group of coal mines, the Commissioner shall have power to apportion such amount among the owners of such group, and in making such apportionment, the Commissioner

shall have regard to the highest annual production in the coal mine during the three years immediately preceding the appointed day.".

Validation.

19. Notwithstanding any judgment, decree, order or direction of any court to the contrary—

(*a*) every amount paid to the owner of every coking coal mine or group of coking coal mines under section 10, or of every coke oven plant under section 11, of the Coking Coal Act, or to the owner of every coal mine or group of coal mines under section 8 of the Coal Mines Act (hereafter in either case referred to as the owner), shall be deemed to include and be deemed always to have included, the amounts required to be paid to the owner in respect of the coal in stock or other assets, coke in stock or other assets, referred to in clause (*j*), or clause (*b*) of section 3 of the Coking Coal Act or, as the case may be, coal in stock or other assets referred to in clause (*h*) of section 2 of the Coal Mines Act, on the date immediately before the appointed day as if the provisions of section 10, or section 11, of the Coking Coal Act or, as the case may be, section 8 of the Coal Mines Act, as amended by this Act, had been in force at all material times, and no such payment shall be called in question in any court on the ground that it had not included the value of such coal or coke or other assets;

(*b*) every statement of accounts or supplementary statement of accounts prepared by the Central Government or the Government company under section 22 of the Coking Coal Act or under section 19 of the Coal Mines Act, shall be deemed to have been validly prepared as if the provisions of section 22 of the Coking Coal Act or, as the case may be, section 19 of the Coal Mines Act, as amended by this Act, had been in force at all material times, and no such statement of accounts or supplementary statement of accounts shall be called in question in any court on the ground that it had not been prepared in accordance with the normal commercial practice or that any item has or has not been included in such statement,

and accordingly, no suit or other legal proceeding shall be maintained or continued in any court,—

(*i*) for the recovery of any sum on the ground that the amount paid to the owner under section 10 or section 11 of the Coking Coal Act or under section 8 of the Coal Mines Act, does not include the amounts required to be paid in respect of all coal or coke in stock or other assets referred to in clause (*a*); or

(*ii*) for the recovery of any sum as being the excess of receipts over payments on the ground that the statement of accounts or supplementary statement of accounts required to be prepared under section 22 of the Coking Coal Act or, as the case may be, section 19 of the Coal Mines Act, had not been prepared in accordance with the normal commercial practice or that any item has or has not been included in such statement.

Explanation.—In this section,—

(*a*) "appointed day" means,—

(*i*) in relation to the Coking Coal Act, the 1st day of May, 1972; and

(*ii*) in relation to the Coal Mines Act, the 1st day of May, 1973;

(*b*) "receipts" and "payments" mean receipts and payments in the statement of accounts prepared under section 22 of the Coking Coal Act or, as the case may be, section 19 of the Coal Mines Act.

Ordinance 7 of 1986.

20. (*1*) The Coal Mines Nationalisation Laws (Amendment) Ordinance, 1986, is hereby repealed. Repeal and saving.

(2) Notwithstanding such repeal, anything done or any action taken under the Coking Coal Act or the Coal Mines Act, as amended by the said Ordinance, shall be deemed to have been done or taken under the Coking Coal Act or, as the case may be, the Coal Mines Act, as amended by this Act

STATEMENT OF OBJECTS AND REASONS

After the nationalisation of coal mines in India under the Coking Coal Mines (Nationalisation) Act, 1972 (Coking Coal Act) and the Coal Mines (Nationalisation) Act, 1973, (Coal Mines Act), certain judicial pronouncements in regard to the interpretation of the provisions of the said Acts necessitated a few amendments in the relevant provisions of those Acts. It was also found necessary to remove certain ambiguities and difficulties in implementing those provisions. The Coal Mines Nationalisation Laws (Amendment) Ordinance 1986 (7 of 1986) was thus promulgated by the President on the 7th October, 1986 to make certain amendments in the above two Acts. Some of the important amendments which the Ordinance proposed were as follows:—

(*a*) the definition of "mine" in the Coking Coal Act and the Coal Mines Act included all coal and coke belonging to the owner of the mine whether in stock or in transit and all coal under production in a mine on a day immediately prior to the date on which the coal mines were nationalised. Accordingly, the amounts specified in the Schedules to the two Acts included the value of the coke and coal in stock lying at the mines at the time of nationalisation. The Supreme Court, however, in a recent case, while agreeing with the contention that the coke and coal stocks lying at the mine vested in the Government as a result of nationalisation, took the view that the value of coke and coal stoks had to be taken into account for balancing the position of accounts as on the date immediately preceding the date of nationalisation. This would have involved double payment of the amount in as much as the value of the coke and coal stocks had already been included in the amounts mentioned in the Schedules to the Acts against each coal mine. In order to make the intention clear, sections 10 and 22 of the Coking Coal Act and sections 8 and 19 of the Coal Mines Act were amended restrospectively to remove any doubts in the matter and to clarify that the amounts specified in the Schedules to the relevant Acts shall also be deemed to include the amounts required to be paid to the owner in respect of the stock of coke and coal or other assets referred to in the definition of "mine" in the relevant Acts. Necessary provision validating the action taken under the two Acts was also made.

(*b*) With the commencement of the Coal Mines (Nationalisation) Amendment Act, 1976 on 29-4-1976, carrying on of coal mining operation or leasing for mining coal by any private party were prohibited. Thus, section 4(2) of the Coking Coal Act and section 3(2) of the Coal Mines Act became redundant and were omitted with effect from 29-4-1976, with a saving clause to protect action, if any, taken under the existing provisions. A provision for correction of an error, omission or mis-description was also added to section 3 of the Coal Mines Act, on the lines of a similar provision in the Coking Coal Act.

(c) Section 25 of both the Acts was amended so as to clarify that any amount in excess of payment over receipts in the statement of accounts prepared by the coal companies shall be deemed to be the amount advanced by the Central Government or the Custodian.

(d) Section 26 of both the Acts was also amended to empower the Commissioner of Payments to make apportionment of the amount among the various owners on the basis of the highest annual production in the relevant coal mines during the last 3 years immediately preceding the appointed day.

2. The Bill seeks to replace the above mentioned Ordinance. It also seeks to make certain further amendments of a clarificatory nature, which have been explained in the memorandum annexed to this Bill.

NEW DELHI; VASANT SATHE.

The 6th November, 1986.

FINANCIAL MEMORANDUM

Clauses 7 and 15 of the Bill, respectively, provide for the payment, by the Central Government, of simple interest at the rate of 4 per cent. per annum on the management period surplus amount, to the ex-owners of the coal mines nationalised under the Coking Coal Act and the Coal Mines Act for the period commencing immediately after the specified date *viz.*, 1-4-1973 under section 22(3) of the Coking Coal Act and 1-7-1975 under section 19 of the Coal Mines Act to the date of payment of the said amount to the Commissioner. Expenditure on account of payment of interest under clauses 7 and 15 of the Bill, if enacted, would likely to be of the order of about rupees one crore. However, the amount is not chargeable to the Consolidated Fund of India inasmuch as the Government companies were managing the coal mines before nationalisation on behalf of the Central Government and on nationalisation, such coal mines vested in the Government companies who had to pay the management period surplus to the Commissioner of Payments immediately after the specified dates. As the ways and means position of the Government companies were not comfortable, the Government extended Non-Plan support in the form of loan, a part of which was utilised for payment of the management period surplus with simple interest at the rate of 4 per cent to the Commissioner of Payments. As the Non-Plan loan is repayable to Government with interest, the question of outgo of funds from the Consolidated Fund of India does not arise.

2. The Bill, if enacted and brought into operation, would not involve any expenditure from the Consolidated Fund of India.

Memorandum Explaining the Modifications contained in the Bill to replace the Coal Mines Nationalisation Laws (Amendment) Ordinance, 1986.

The Coal Mines Nationalisation Laws (Amendment) Bill, 1986 which seeks to repeal and replace the Coal Mines Nationalisation Laws (Amendment) Ordinance, 1986, proposes to make the following modifications, apart from modifications of consequential or drafting nature in the provisions contained in the said Ordinance, namely:—

(1) The amendments made to section 4 of the Coking Coal Act and section 3 of the Coal Mines Act are being made retrospective from 1-6-1972 and 1-6-1973 respectively instead of from 29-4-1976 (*Vide* clauses 2 and 11 of the Bill). Similarly, the amendments made by clauses 7 and 15 of the Bill are being made retrospective from 1-4-1973 and 1-7-1975 respectively, which are the specified dates in the aforesaid Acts.

(2) Clause 5 of the Bill proposes to insert a new sub-section in section 11 of the Coking Coal Act on the lines of sub-section (2) of section 10 of that Act so as to avoid any possible litigation from the erstwhile owners of coke-oven plants on the ground that the value of coke had not been included in the amount of compensation paid to them.

(3) Sections 21(5) and 18(5) of the Coking Coal Act and Coal Mines Act respectively are being amended to provide for the payment of interest on the amount of compensation also to the Commissioner (*vide* clauses 7 and 15 of the Bill).

BILL No. 132 OF 1986

A Bill to provide for the adjudication, by an appellate tribunal, of disputes with respect to the determination of the rates of duties of customs and Central excise on goods and to the valuation of goods for the purposes of assessment of such duties, in pursuance of article 323B of the Constitution and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Thirty-seventh Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

Short title, extent and commencement.

1. (*1*) This Act may be called the Customs and Excise Revenues Appellate Tribunal Act, 1986.

(*2*) It extends to the whole of India.

(*3*) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Definitions.

2. In this Act, unless the context otherwise requires,—

(*a*) "Appellate Tribunal" means the Customs and Excise Revenues Appellate Tribunal constituted under section 3;

(*b*) "appointed day" means the date with effect from which the Appellate Tribunal is established, by notification, under section 3;

(*c*) "Bench" means a Bench of the Appellate Tribunal;

(*d*) "Board" means the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963; 54 of 1963.

(*e*) "Central Excises Act" means the Central Excises and Salt Act, 1944; 1 of 1944.

(*f*) "Central Excise Tariff Act" means the Central Excise Tariff Act, 1985; 5 of 1986.

(*g*) "Customs Act" means the Customs Act, 1962; 52 of 1962.

(*h*) "Customs, Excise and Gold (Control) Appellate Tribunal" means the Customs, Excise and Gold (Control) Appellate Tribunal constituted under section 129 of the Customs Act;

(*i*) "Customs Tariff Act" means the Customs Tariff Act, 1975. 51 of 1975.

(*j*) "Judicial Member" means a Member of the Appellate Tribunal appointed as such under this Act, and includes the President who possesses any of the qualifications specified in sub-section (*2*) of section 5;

(*k*) "Member" means a Member (whether Judicial or Technical) of the Appellate Tribunal and includes the President;

(*l*) "notification" means a notification published in the Official Gazette;

(*m*) "President" means the President of the Appellate Tribunal;

(*n*) "prescribed" means prescribed by rules;

(*o*) "rules" means rules made under this Act;

(*p*) "Supreme Court" means the Supreme Court of India;

(*q*) "Technical Member" means a Member of the Appellate Tribunal who is not a Judicial Member within the meaning of clause (*j*);

(*r*) words and expressions used in this Act but not defined herein and defined in the Central Excises Act, Central Excise Tariff Act, Customs Act or Customs Tariff Act, or the rules made thereunder, shall have the meanings respectively assigned to them by such Act or the rules made thereunder.

CHAPTER II

ESTABLISHMENT OF THE APPELLATE TRIBUNAL AND BENCHES THEREOF

Establishment of the Appellate Tribunal.

3. The Central Government shall, by notification, establish an Appellate Tribunal to be known as the Customs and Excise Duties Appellate Tribunal, to exercise the jurisdiction, powers and authority conferred on such Appellate Tribunal by or under this Act.

Composition of the Appellate Tribunal and Benches thereof.

4. (*1*) **The Appellate Tribunal shall consist of a President and such number of Judicial and Technical Members as the Central Government may deem fit, and subject to the other provisions of this Act, the jurisdiction, powers and authority of the Appellate Tribunal may be exercised by Benches thereof.**

(*2*) A Bench shall consist of one Judicial Member and one Technical Member.

(3) Notwithstanding anything contained in sub-section (1), the President—

(a) may, in addition to discharging the functions of the Judicial Member or the Technical Member of the Bench to which he is appointed, discharge the functions of the Judicial Member or, as the case may be, the Technical Member, of any other Bench;

(b) may transfer a Member from one Bench to another Bench; and

(c) may authorise the Judicial Member or the Technical Member appointed to one Bench to discharge also the functions of the Judicial Member or the Technical Member, as the case may be, of another Bench.

(4) Notwithstanding anything contained in the foregoing provisions of this section, it shall be competent for the President or any other Member authorised by the President in this behalf to function as a Bench consisting of a single Member and exercise the jurisdiction, powers and authority of the Appellate Tribunal in respect of such classes of cases or such matters pertaining to such classes of cases as the President may by general or special order specify:

Provided that if at any stage of the hearing of any such case or matter it appears to the President or Member that the case or matter is of such a nature that it ought to be heard by a Bench consisting of two Members, the case or matter may be transferred by the President or, as the case may be, referred to him for transfer to, such Bench as the President may deem fit.

(5) Subject to the other provisions of this Act, the Benches of the Appellate Tribunal shall ordinarily sit at New Delhi and at such other places as the President may deem fit.

Qualifications for appointment as President or Member.

5. (1) A person shall not be qualified for appointment as the President unless he—

(a) is, or has been, a Judge of a High Court; or

(b) has, for at least two years, held the office of a Judicial Member or a Technical Member.

(2) A person shall not be qualified for appointment as a Judicial Member unless he—

(a) is, or has been, or is qualified to be, a Judge of a High Court; or

(b) has been a member of the Indian Legal Service and has held a post in Grade I of that Service or any equivalent or higher post for at least five years.

(3) A person shall not be qualified for appointment as a Technical Member unless he has been a member of the Indian Customs and Central Excise Service, Group 'A', for a period of at least thirty years, and has held during this period the post of Collector of Customs or Central Excise or any equivalent or higher post for at least ten years.

Appointment of President and Members.

6. (*1*) Subject to the provisions of sub-section (*2*), the President and every Member shall be appointed by the President of India.

(*2*) Appointment of a person as the President or a Member shall be made in consultation with a Selection Committee consisting of—

(*a*) a Chairman who shall be nominated by the Chief Justice of India; and

(*b*) such other members as may be nominated by the Central Government.

Member to act as President or to discharge his functions in certain circumstances.

7. (*1*) In the event of the occurrence of any vacancy in the office of the President by reason of his death, resignation or otherwise, such one of the Members as the Central Government may, by notification, authorise in this behalf, shall act as the President until the date on which a new President, appointed in accordance with the provisions of this Act to fill such vacancy enters upon his office.

(*2*) When the President is unable to discharge his functions owing to absence, illness or any other cause, such one of the Members as the Central Government may, by notification, authorise in this behalf, shall discharge the functions of the President until the date on which the President resumes his duties.

Term of office.

8. The President or other Member shall hold office as such for a term of three years from the date on which he enters upon his office or until he attains the age of sixty-five years, whichever is earlier.

Resignation and removal.

9. (*1*) The President or other Member may, by notice in writing under his hand addressed to the President of India, resign his office:

Provided that the President or other Member shall, unless he is permitted by the President of India to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

(*2*) The President or any other Member shall not be removed from his office except by an order made by the President of India on the ground of proved misbehaviour or incapacity after an inquiry made by a Judge of the Supreme Court in which such President or other Member had been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

(3) The Central Government may, by rules, regulate the procedure for the investigation of misbehaviour or incapacity of the President or other Member referred to in sub-section (2).

Salaries and allowances and other terms and conditions of service of President and other Members.

10. The salaries and allowances payable to and the other terms and conditions of service (including pension, gratuity and other retirement benefits) of, the President and other Members shall be such as may be prescribed by the Central Government.

Provided that neither the salary and allowances nor the other terms and conditions of service of the President or other Member shall be varied to his disadvantage after his appointment.

Provision as to the holding of offices by President and Members on ceasing to be such President or Member.

11. On ceasing to hold office,—

(a) the President shall be ineligible for further employment either under the Government of India or under the Government of a State;

(b) a Member (other than the President) shall, subject to the other provisions of this Act, be eligible for appointment as the President, but not for any employment either under the Government of India or under the Government of a State;

(c) the President or other Member shall not appear, act or plead before the Appellate Tribunal or the Customs, Excise and Gold (Control) Appellate Tribunal.

Explanation.—For the purposes of this section, employment under the Government of India or under the Government of a State includes employment under any local or other authority within the territory of India or under the control of the Government of India or under any corporation or society owned or controlled by the Government.

Financial and administrative powers of President.

12. The President shall exercise such financial and administrative powers over the Benches as may be vested in him under the rules:

Provided that the President shall have authority to delegate such of his financial and administrative powers as he may think fit to any Member or officer of the Appellate Tribunal, subject to the condition that the Member or such officer shall, while exercising such delegated powers, continue to act under the direction, control and supervision of the President.

Staff of the Appellate Tribunal.

13. (1) **The Central Government shall determine the nature and categories of the officers and other employees required to assist the Appellate Tribunal in the discharge of its functions and provide the Appellate Tribunal with such officers and other employees as it may think fit.**

(2) The officers and other employees of the Appellate Tribunal shall discharge their functions under the general superintendence of the President.

(3) The salaries and allowances and conditions of service of the officers and other employees of the Appellate Tribunal, shall be such as may be specified by rules.

CHAPTER III

JURISDICTION, POWERS AND AUTHORITY OF THE APPELLATE TRIBUNAL

Jurisdiction, powers and authority of the Appellate Tribunal.

14. (*1*) Save as otherwise expressly provided in this Act, the Appellate Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable in relation to an appeal against—

(*a*) a decision or order passed by the Collector of Central Excise as an adjudicating authority;

(*b*) an order passed by the Collector (Appeals) under section 35A or section 35E of the Central Excises Act;

(*c*) a decision or order passed by the Collector of Customs as an adjudicating authority;

(*d*) an order passed by the Collector (Appeals) under section 128A or section 129D of the Customs Act,

in which the determination of any question having a relation to—

(*i*) the rate of duty of excise for the time being in force, whether under the Central Excise Tariff Act or under any other Central Act providing for the levy and collection of any duty of excise, in relation to any goods on or after the 28th day of February, 1986; or

(*ii*) the rate of duty of customs for the time being in force, whether under the Customs Tariff Act or under any other Central Act providing for the levy and collection of any duty of customs, in relation to any goods on or after the 28th day of February, 1986; or

(*iii*) the value of goods for the purposes of assessment of any duty of excise in cases where the assessment is made on or after the 28th day of February, 1986; or

(*iv*) the value of goods for the purposes of assessment of any duty of customs in cases where the assessment is made on or after the 28th day of February, 1986,

is in issue or is one of the points in issue.

Explanation.—For the purposes of this sub-section, the determination of a rate of duty in relation to any goods or valuation of any goods for the purposes of assessment of duty includes the determination of a question—

(*a*) whether any goods are excisable goods or whether the rate of duty on any goods is nil;

(*b*) whether any goods fall under a particular heading or sub-heading of the Schedule to the Central Excise Tariff Act or the Additional Duties of Excise (Goods of Special Importance) Act, 1957 or the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 or fall under the First Schedule or the Second Schedule to the

58 of 1957.

40 of 1978.

Customs Tariff Act, as the case may be, or that any goods are or not covered by a notification or order issued by the Central Government or the Board, granting total or partial exemption from a duty of excise or customs, as the case may be;

(c) whether the value of any goods for the purposes of assessment of a duty of excise or customs shall be enhanced or reduced by the addition or reduction of the amounts in respect of such matters as are specifically provided in the Central Excises Act or the Customs Act.

(2) For the removal of doubts, it is hereby declared that nothing in sub-section (1) shall preclude the entertainment of an appeal in relation to any of the matters dealt with in sub-section (1) by the Customs, Excise and Gold (Control) Appellate Tribunal or the disposal thereof during the period commencing on and from the 28th day of February, 1986 and ending with the appointed day and any order passed by the said Tribunal on such appeal during that period shall, for all purposes, have effect as an order of the Appellate Tribunal constituted under this Act and all the provisions of this Act shall apply to such order.

Bar of jurisdiction of the Appellate Tribunal in certain cases.

15. Notwithstanding anything contained in section 14, no appeal shall lie to the Appellate Tribunal and the Appellate Tribunal shall not have jurisdiction to decide any appeal in respect of any decision or order referred to in section 14 if such decision or order relates only to,—

(a) a case of loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory, or from one warehouse to another, or during the course of processing of the goods in a warehouse or in storage, whether in a factory or in a warehouse;

(b) a rebate of duty of excise on goods exported to any country or territory outside India or on excisable materials used in the manufacture of goods which are exported to any country or territory outside India;

(c) goods exported outside India (except to Nepal or Bhutan) without payment of duty;

(d) any goods imported or exported as baggage or by post;

(e) any goods loaded, or deemed to have been loaded in accordance with an import manifest or import report, in a conveyance for importation into India, but which are not unloaded at their place of destination in India, or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination or any goods which have been lost or destroyed after being unloaded at any such destination;

(f) payment of drawback as provided in Chapter X of the Customs Act and the rules made thereunder.

Power to punish for contempt.

16. The Appellate Tribunal shall have, and exercise, the same jurisdiction, powers and authority in respect of contempt of itself as a High Court has and may exercise and, for this purpose, the provisions of the

70 of 1971. Contempt of Courts Act, 1971, shall have effect subject to the modifications that—

(*a*) the references therein to a High Court shall be construed as including a reference to the Appellate Tribunal;

(*b*) the references to the Advocate-General in section 15 of the said Act shall be construed, in relation to the Appellate Tribunal, as a reference to the Attorney-General or the Solicitor-General or the Additional Solicitor-General.

Distribution of business amongst the Appellate Tribunal and its Benches.

17. (*1*) Where any Benches of the Appellate Tribunal are constituted, the President may, from time to time, by order, make provisions as to the distribution of the business of the Appellate Tribunal amongst the Benches and specify the matters which may be dealt with by each Bench.

(2) If any question arises as to whether any matter falls within the purview of the business allocated to a Bench of the Appellate Tribunal, the decision of the President thereon shall be final.

CHAPTER IV

PROCEDURE

Appeals to the Appellate Tribunal.

18. (*1*) Subject to the other provisions of this Act, every appeal to the Appellate Tribunal under this Act shall be filed within three months from the date on which the decision or order sought to be appealed against is communicated to the person aggrieved by the decision or order or to the Collector of Central Excise or the Collector of Customs, as the case may be.

(2) On receipt of notice that an appeal has been preferred under this section, the party against whom the appeal has been preferred may, notwithstanding that he may not have appealed against such order or any part thereof, file within forty-five days of the receipt of the notice a memorandum of cross-objections verified in such manner as may be specified by rules made in this behalf against any part of the order appealed against and such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the time specified in sub-section (*1*).

(3) The Appellate Tribunal may admit an appeal or permit the filing of a memorandum of cross-objections after the expiry of the relevant period referred to in sub-section (*1*) or sub-section (2), if it is satisfied that there was sufficient cause for not presenting it within that period.

(4) Every appeal to the Appellate Tribunal shall be in such form and shall be verified in such manner as may be specified by rules made

in this behalf and shall, except in the case of an appeal preferred by the proper officer or a memorandum of cross-objections referred to in sub-section (2), be accompanied by a fee of two hundred rupees.

Procedure and powers of the Appellate Tribunal.

19. (*1*) The Appellate Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and subject to the other provisions of this Act and of any rules made by the Central Government, the Appellate Tribunal shall have power to regulate its own procedure, including the fixing of places and times of its hearing. 5 of 1908.

(*2*) The Appellate Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:— 5 of 1908.

(*a*) summoning and enforcing the attendance of any person and examining him on oath;

(*b*) requiring the discovery, inspection and production of books of account and other documents;

(*c*) reviewing its decisions;

(*d*) dismissing an appeal for defa

(*e*) any other matter which may be prescribed.

Deposit, pending appeal, of duty demanded or penalty levied.

20. Where in any appeal under this Act, the decision or order appealed against relates to any duty demanded in respect of goods which are not under the control of the central excise authorities or the customs authorities, as the case may be, or any penalty levied under the Central Excises Act or the Customs Act, the person desirous of appealing against such decision or order shall, pending the appeal, deposit with the proper officer the duty demanded or the penalty levied:

Provided that where in any particular case, the Appellate Tribunal is of opinion that the deposit of duty demanded or penalty levied would cause undue hardship to such person, the Appellate Tribunal may dispense with such deposit subject to such conditions as it may deem fit to impose so as to safeguard the interests of revenue.

Right of applicant to take assistance of legal practitioner and Government to appoint representing officers.

21. (1) A person preferring an appeal to the Appellate Tribunal under this Act may either appear in person or take the assistance of a legal practitioner of his choice to present his case before the Appellate Tribunal.

(2) The Central Government may authorise one or more legal practitioners or any of its officers to act as presenting officer and any person so authorised by it may present its case with respect to any appeal before the Appellate Tribunal.

Conditions as to making of interim orders.

22. Notwithstanding anything contained in any other provisions of this Act or in any other law for the time being in force, no interim order (whether by way of injunction or stay or in any other manner) shall be made on, or in any proceedings relating to, an appeal under this Act unless—

(a) copies of such appeal and of all documents in support of the plea for such interim order are furnished to the party against whom such appeal is preferred; and

(b) opportunity is given to such party to be heard in the matter:

Provided that the Appellate Tribunal may dispense with the requirements of clauses (a) and (b) and make an interim order as an exceptional measures if it is satisfied, for reasons to be recorded in writing, that it is necessary so to do for preventing any loss being caused to the appellant which cannot be adequately compensated in money but any such interim order shall, if it is not sooner vacated cease to have effect on the expiry of a period of fourteen days from the date on which it is made unless the said requirements have been complied with before the expiry of that period and the Appellate Tribunal has continued the operation of the interim order.

Power of President to transfer cases from one Bench to another.

23. On the application of any of the parties and after notice to the parties, and after hearing such of them as he may desire to be heard, or on his own motion without such notice, the President may transfer any case pending before one Bench, for disposal, to any other Bench.

Procedure for deciding the case where the Members of a Bench differ in opinion.

24. If the Members of a Bench differs in opinion on any point, they shall state the point or points on which they differ, and make a reference to the President who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other Members and such point or points shall be decided according to the opinion of the majority of the Members who have heard the case, including those who first heard it.

Orders of the Appellate Tribunal.

25. (1) The Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the decision or order appealed against or may refer the case back to the authority which passed such decision or order with such directions as the Appellate Tribunal may think fit, for a fresh adjudication or decision, as the case may be, after taking additional evidence, if necessary.

(2) The Appellate Tribunal may, at any time within four years from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it under sub-section (1) and shall make such amendments if the mistake is brought to its notice by the Collector of Central Excise or the Collector of Customs, as the case may be, or the other party to the appeal:

Provided that an amendment which has the effect of enhancing the assessment or reducing a refund or otherwise increasing the liability of the other party shall not be made under this sub-section, unless the Appellate Tribunal has given notice to him of its intention to do so and has allowed him a reasonable opportunity of being heard.

(3) The Appellate Tribunal shall send a copy of every order passed under this section to the Collector of Central Excise or the Collector of Customs, as the case may be, and the other party to the appeal.

CHAPTER V

MISCELLANEOUS

Exclusion of jurisdiction of courts except the Supreme Court.

26. On and from the appointed day, no court (except the Supreme Court) or the Customs, Excise and Gold (Control) Appellate Tribunal shall have, or be entitled to exercise, any jurisdiction, powers or authority in relation to matters in respect of which appeals would lie to the Appellate Tribunal under section 14.

Transfer of pending cases.

27. (1) Every suit, appeal or other proceedings pending before any court or other authority or the Customs, Excise and Gold (Control) Appellate Tribunal, immediately before the appointed day, being a suit, appeal or other proceedings which would have been within the jurisdiction of the Appellate Tribunal, if it had arisen after such day, shall stand transferred on that day to the Appellate Tribunal:

Provided that nothing in this sub-section shall apply to any appeal pending as aforesaid before a High Court.

(2) Where any suit, appeal or other proceeding stands transferred from any court, tribunal or other authority to the Appellate Tribunal under sub-section (1),—

(a) the court or other authority or the Customs, Excise and Gold (Control) Appellate Tribunal shall, as soon as may be after such transfer, forward the records of such suit, appeal or other proceeding to the Appellate Tribunal; and

(b) the Appellate Tribunal may, on receipt of such records, proceed to deal with such suit, appeal or other proceeding, so far as may be, in the same manner as in the case of an appeal under section 19 from the stage which was reached before such transfer or from any earlier stage or *de novo* as the Appellate Tribunal may deem fit.

(3) Any person, who immediately before the appointed day, is an advocate or authorised representative entitled to practice in any court or other authority or the Customs, Excise and Gold (Control) Appellate Tribunal and was authorised to appear or to act in any proceedings transferred from the said court, other authority or Tribunal to the Appellate Tribunal under this section shall have the right to appear or

to act, as the case may be, before the Appellate Tribunal in relation to the said suit, appeal or other proceeding.

Proceedings before the Appellate Tribunal to be judicial proceeding.

28 All proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193, 219 and 228 of the Indian Penal Code. 45 of 1869.

Members and staff of the Appellate Tribunal to be public servants.

29. The President and other Members and the officers and other employees of the Appellate Tribunal shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code. 45 of 1860.

Protection of action taken in good faith.

30. No suit, prosecution or other legal proceedings shall lit against the Central Government or against the President or other Member, or any other person authorised by such President or other Member for anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made thereunder.

Act to have overriding effect.

31. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any law other than this Act.

Power to make rules.

32. (*1*) The Central Government may, by notification, make rules to carry out the provisions of this Act.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(*a*) the salaries and allowances and other terms and conditions of service of President and other Members under section 10;

(*b*) the financial and administrative powers which the President may exercise over the Benches under section 12;

(*c*) the salaries and allowances and conditions of service of the officers and other employees of the Appellate Tribunal under sub-section (3) of section 13;

(*d*) the form in which every appeal to the Appellate Tribunal shall be filed and the manner in which such appeal shall be verified under sub-section (*4*) of section 18; and

(*e*) any other matter which has to be, or may be, prescribed by rules under this Act.

(*3*) Every rule made under this Act by the Central Government shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may

be comprised in one session, or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Power to remove difficulties.

33. (*1*) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty:

Provided that no such order shall be made after the expiry of a period of three years from the appointed day.

(*2*) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

Consequential amendments in the Central Excises Act and the Customs Act.

34. On and from the appointed day, the following amendments (being amendments of a consequential nature) shall be made in the Central Excises Act and the Customs Act, namely:—

(*a*) in the Central Excises Act,—

(*i*) for sub-section (*2*) of section 35B, the following sub-section shall be substituted, namely:—

"(*2*) The Collector of Central Excise may, if he is of opinion that an order passed by—

(*a*) the Appellate Collector of Central Excise under section 35, as it stood immediately before the appointed day, or

(*b*) the Collector (Appeals) under section 35A,

is not legal or proper, direct any Central Excise Officer authorised by him in this behalf (hereafter in this Chapter referred to as the authorised officer) to appeal on his behalf to the Appellate Tribunal or, as the case may be, the Customs and Excise Revenues Appellate Tribunal established under section 3 of the Customs and Excise Revenues Appellate Tribunal Act, 1986, against such order.";

(*ii*) in section 35E,—

(A) after the words "Appellate Tribunal", wherever they occur, the words and figures "or, as the case may be, the Customs and Excise Revenues Appellate Tribunal established under section 3 of the Customs and Excise Revenues Appellate Tribunal Act, 1986" shall be inserted;

(B) in sub-section (4), after the words figures and letter "section 35B", the words and figures "of, as the case may be, the provisions of the Customs and Excise Revenues Appellate Tribunal Act, 1986" shall be inserted;

(b) in the Customs Act,—

(i) for sub-section (2) of section 129A, the following sub-section shall be substituted, namely:—

"(2) The Collector of Customs may, if he is of opinion that an order passed by—

(a) the Appellate Collector of Customs under section 128, as it stood immediately before the appointed day, or

(b) the Collector (Appeals) under section 128A, is on his behalf to the Appellate Tribunal or, as the case may "(2) The Collector of Customs may, if he of opinion be, the Customs and Excise Revenues Appellate Tribunal established under section 3 of the Customs and Excise Revenues Appellate Tribunal Act, 1986, against such order.";

(ii) in section 129D,—

(A) after the words "Appellate Tribunal", wherever they occur, the words and figures "or, as the case may be, the Customs and Excise Revenues Appellate Tribunal established under section 3 of the Customs and Excise Revenues Appellate Tribunal Act, 1986" shall be inserted;

(B) in sub-section (4), after the word, figures and letter "section 129A", the words and figures "or, as the case may be, the provisions of the Customs and Excise Revenues Appellate Tribunal Act, 1986" shall be inserted.

STATEMENT OF OBJECTS AND REASONS

Article 323B of the Constitution stipulates that the appropriate legislature may, by law, provide for the adjudication or trial by tribunals of any disputes, complaints, or offences with respect to all or any of the matters specified in clause (2) of that article with respect to which such Legislature has power to make laws. One of the matters enumerated in the said clause is the levy, assessment, collection and enforcement of any tax including any matter incidental thereto.

2. The Bill seeks to give effect to the aforesaid constitutional provision by the establishment of an Appellate Tribunal to provide for the adjudication of disputes with respect to the determination of the rates of duties of customs and central excise on goods and to the valuation of goods for the purposes of assessment of such duties. The Bill also provides for—

(a) the jurisdiction, powers and authority which may be exercised by the Appellate Tribunal;

(b) the procedure (including provision as to limitation and rules of evidence) to be followed by the Appellate Tribunal;

(c) exclusion of the jurisdiction of all courts, except that of the Supreme Court, relating to matters falling within the jurisdiction of the Appellate Tribunal;

(d) the transfer to the Appellate Tribunal of any suit, appeal or other proceedings pending before any court, etc., immediately before the establishment of the Tribunal which would have been within the jurisdiction of the Tribunal if such suit, appeal or other proceedings had arisen after such establishment.

3. The establishment of the Appellate Tribunal under the aforesaid provision of the Constitution has become necessary as in recent years there had been an enormous increase in litigation relating to customs and excise cases. Many of these cases relate to disputes pertaining to the determination of the rate of duty and value of goods for purposes of levy of customs and excise duties. It is expected that the establishment of the Appellate Tribunal will reduce litigation and will also impart greater certainty in the administration of the said duties.

4. The Notes on clauses explain in detail the various provisions of the Bill.

5. The Bill seeks to achieve the above objects.

NEW DELHI; VISHWANATH PRATAP SINGH.

The 12th November, 1986.

Notes on Clauses

Clause 2.—This clause definies certain expressions occurring in the Act.

Clause 3.—This clause provides for the establishment of the Appellate Tribunal.

Clause 4.—This clause states what shall be the organisation of the Appellate Tribunal, the composition of its Benches and the manner in which the Benches shall function.

Clause 5.—This clause prescribes the qualifications for appointment as President, Judicial Member or Technical Member of the Appellate Tribunal.

Clause 6.—This clause prescribes the manner in which the President and Members of the Appellate Tribunal shall be appointed.

Clause 7.—This clause provides for the discharge of the President's functions in the contingency when the President is unable to discharge his functions or the office of the President is vacant.

Clause 8.—This clause fixes the tenure of the President or other Members of the Appellate Tribunal subject to a maximum age-limit.

Clause 9.—This clause details the procedure for resignation or removal of the President or other Members of the Appellate Tribunal.

Clause 10.—This clause provides for the framing of rules by the Central Government to regulate the salaries and allowances and other conditions of service of President and other Members.

Clause 11.—This clause states the position as to further employment of the President and Members on their ceasing to hold office as such.

Clause 12.—This clause provides for the President to exercise financial and administrative powers and for delegation of such powers.

Clause 13.—This clause provides that the Central Government shall provide the staff for the functioning of the Appellate Tribunal.

Clause 14.—This clause defines the jurisdiction, powers and authority of the Appellate Tribunal.

Clause 15.—This clause provides for bar of the jurisdiction of the Appellate Tribunal in certain cases.

Clause 16.—This clause vests the Appellate Tribunal with powers to punish for contempt of itself as a High Court.

Clause 17.—This clause provides for appropriate provisions being made by the President for distribution of business amongst the Appellate Tribunal and its Benches.

Clause 18.—This clause provides for the procedure for preferring appeal to the Appellate Tribunal.

Clause 19.—This clause provides that the Appellate Tribunal shall have the power to regulate its own procedure subject to the other provisions of this Act or of any rules made by the Central Government. It also invests the Appellate Tribunal with powers of a civil court in respect of certain specified matters.

Clause 20.—This clause provides for the amount demanded as duty or imposed as penalty in a dispute being deposited pending appeal; and also for deposit being dispensed within certain circumstances.

Clause 21.—This clause provides for the aggrieved person taking the assistance of a legal practitioner and the Central Government presenting its case through one or more persons whether legal practitioners or not.

Clause 22.—This clause empowers the Appellate Tribunal to make interim orders subject to certain conditions.

Clause 23.—This clause defines the powers of the President to transfer cases pending before one Bench to any other Bench for disposal.

Clause 24.—This clause prescribes the procedure to be followed for deciding a case where the Members of a Bench differ in opinion.

Clause 25.—This clause indicates in what manner orders may be passed by the Appellate Tribunal on appeals. It also provides for rectification of mistakes apparent in such orders.

Clause 26.—This Clause provides for the exclusion of the jurisdiction of all courts, etc., except the Supreme Court in relation to matters in respect of which appeals would lie to the Appellate Tribunal.

Clause 27.—This clause provides for the transfer to the Appellate Tribunal of all matters pending in the courts and in the Customs, Excise and Gold (Control) Appellate Tribunal which fall within the jurisdiction of the proposed Tribunal. However, appeals pending in the High Court shall not be so transferred.

Clause 28.—This clause makes it clear that all proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings.

Clause 29.—This clause makes it clear that Members and staff of the Appellate Tribunal shall be deemed to be public servants.

Clause 30.—This clause provides for protection of the Central Government or the President or other Members of the Appellate Tribunal in respect of anything done in good faith in persuance of this Act.

Clause 31.—This clause is for giving overriding effect to the provisions of the legislation.

Clause 32.—This clause empowers the Central Government to make rules for various matters relating to procedure of the Appellate Tribunal, conditions of service of President and other Members and similar other matters for the proper functioning of the Appellate Tribunal.

Clause 33.—This clause empowers the Central Government to make suitable provisions for removing any difficulty in giving effect to the provisions of the legislation.

Clause 34.—This clause provides for the consequential amendments in the Central Excises Act and the Customs Act.

FINANCIAL MEMORANDUM

The Customs and Excise Appellate Tribunal Bill, 1986, provides for the adjudication by an Appellate Tribunal, of disputes with respect to the duties of customs and excise and the valuation of the goods for the purposes of assessment of such duties in persuance of article 323B of the Constitution and for matters connected therewith or incidental thereto.

2. Clause 3 of the Bill provides for the establishment of the Appellate Tribunal. According to clause 4 of the Bill, the Appellate Tribunal shall consist of a President and such number of Judicial and Technical Members as may be considered necessary. A Bench shall consist of one Judicial Member and one Technical Member. Clause 10 provides that the salaries and allowances payable to, and the other terms and conditions of service of, the President and other Members shall be such as may be prescribed by the Central Government. Clause 13 provides that the Central Government shall determine the nature and categories of the officers and other employees required to assist the Appellate Tribunal in the discharge of its functions and provide the Appellate Tribunal with such officers and other employees as it may deem fit. Salaries and allowances and conditions of service of the officers and other employees of the Tribunal shall be prescribed by the rules made by the Central Government. These are the provisions in the Bill which will have financial implications once it is enacted.

3. The Appellate Tribunal will comprise six Members including the President. The salary and allowances of the President of the Tribunal would be those admissible to a Judge of the Supreme Court. The Members will be given the salary and allowances of a Judge of a High Court. Adequate supporting staff will also have to be provided to the Tribunal for its efficient functioning.

4. It will also be necessary to provide for an adequate number of Departmental Representatives together with supporting staff so that the Department's cases are put forward properly and effectively before the Appellate Tribunal.

The details of the expenditure relating to the Appellate Tribunal and the Departmental Representatives are given below:—

Sl. No.	Post	No.	Average monthly expenditure	Annual expenditure
1	2	3	4	5
	(a) Appellate Tribunal			
1	President	1	9,000	1,08,000
2	Members	5	8,000	4,80,000
3	Registrar (2000—2250)	1	4,391	52,692

1	2	3	4	5
4	Asst. Registrar (1500 2000)	2	3,759	90,216
5	Technical Officer (2000 3500) revised scale	3	2,850	1,02,600
6	D.O.S. (Level II))	3	1,925	69,3000
7	U.D.C.s	6	1,695	1,22,040
8	L.D.C.s	6	1,270	91,440
9	PS to President & Members	6	2,850	2,05,200
10	PA (Stenographer)	9 (6—3)		2,70,000
11	Librarian	1	2,100	25,200
12	Daftries/Record Keepers	3	1,057·50	38,070
13	Peons/Sepoys	9	875	94,500
14	TA/DA expences-hiring of office accommodation/other expenses, etc.			2,00,00
	TOTAL :			19,49,258
	or say			20,00,000

(*b*) *Departmental Representatives* (*DR*)

1	Senior D.R. (2500—2750)	3	5,316.60	1,91,400
2	D.R.s. (1500—2000)	3	3,759	1,35,324
3	Tech. Officers (2000—3000) reveised scale	3	2,850	1,02,600
4	PAs/Stenographers	9		2,28,820
5	U.D.C.s	3	1,695	61,020
6	L.D.C.s	3	1,270	45,720
7	Peons/Sepoys	6	875	63,000
8	TA/DA Expenses—Hiring of office accommodation and other expenses			1,41,000
	TOTAL :			9,68,884
	or say			10,00,000
	Gross recurring expenditure [Total of (a) and (b)]			30,00,000

5. Recurring expenditure will be of the order of Rs. 30,00,000. Non-recurring expenditure for initial setting up of the new Tribunal may be of the order of Rs. 5 lakhs.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 32 of the Bill empowers the Central Government, by notification in the Official Gazette, to make rules to carry out the provisions of the proposed legislation. Sub-clause (2) of this clause enumerates the matters with respect to which rules may be made under this clause. These matters relate to, *inter alia*, to the salaries and allowances and other terms and conditions of service of President and other Members, financial and administrative powers of the President, salaries and allowances and other conditions of service of the staff of the Appellate Tribunal and the manner of verification of certain documents to be filed in the Appellate Tribunal.

2 As the matters with respect to which rules may be made under clause 32 pertain to matters of procedure or detail, the delegation of legislative powers is of a normal character.

3. Clause 33 of the Bill empowers the Central Government to remove by order any difficulty which may arise in giving effect to the provisions of the proposed legislation. This is by way of abundant caution and for covering difficulties which it is not practicable to visualise. It has, however, been provided that no such order shall be made after the expiry of a period of three years from the date of establishment of the Appellate Tribunal. It has also been provided that a copy of every such order made shall be laid before each House of Parliament.

SUBHASH C. KASHYAP,
Secretary-General.

PRINTED BY THE MANAGER, GOVERNMENT OF INDIA PRESS, MINTO ROAD, NEW DELHI AND PUBLISHED BY THE CONTROLLER OF PUBLICATIONS, DELHI.